

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY COOK, SR.,	§	
	§	No. 333, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0608025757
Appellee.	§	

Submitted: February 15, 2010

Decided: February 26, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 26th of February 2010, upon consideration of the appellant's opening brief, the appellee's motion to affirm, the Superior Court record, and the appellant's letter asking the Court to disregard the motion to affirm as untimely filed, it appears to the Court that:

(1) The appellant, Leroy Cook, Sr., filed this appeal from the Superior Court's May 20, 2009 denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") and related motions. On November 24, 2009, the appellee, State of Delaware, timely moved to affirm¹ the Superior Court

¹ The record reflects that Cook filed his opening brief and appendix on November 13, 2009. The State's motion to affirm was timely filed on November 24, 2009. *See* Del. Supr. Ct. R. 11(c) (adding three days to the prescribed period for filing after service).

judgment on the ground that it is manifest on the face of Cook's opening brief that the appeal is without merit.² We agree and affirm.

(2) The record reflects that Cook was indicted in 2006 on charges of Rape in the Second Degree and Continuous Sexual Abuse of a Child and reindicted in 2007 on charges of Unlawful Sexual Intercourse in the First Degree, Rape in the Second Degree and Continuous Sexual Abuse of a Child. On January 8, 2008, Cook pled guilty to one count of Rape in the Second Degree. The Superior Court sentenced Cook to twenty-five years at Level V, suspended after twelve years for thirteen years at Level IV, suspended after six months for eighteen months at Level III. Cook did not appeal.

(3) In his motion for postconviction relief, Cook alleged that his guilty plea was involuntary due to ineffective assistance of counsel, prosecutorial misconduct, and judicial misconduct. Cook also alleged that the Superior Court erred when denying a motion to dismiss the indictment, when allowing the State to amend the indictment, and when imposing sentence. In related motions, Cook sought a default judgment, an evidentiary hearing, and the appointment of counsel.

(4) By order dated May 20, 2009, the Superior Court denied Cook's postconviction motion. The Superior Court ruled that Cook's claims were foreclosed as a result of his voluntary guilty plea and/or were procedurally barred under Rule

² Del. Supr. Ct. R. 25(a).

61(i)(3).³ By separate order dated May 20, 2009, the Superior Court denied Cook's motions for a default judgment, evidentiary hearing, and appointment of counsel.

(5) On appeal, Cook contends that the Superior Court erred when barring his postconviction claims pursuant to Rule 61(i)(3). Cook argues that a claim of ineffective assistance of counsel is not subject to the procedural bar of Rule 61(i)(3). He also contends that his postconviction motion raised important constitutional issues that warranted application of the Rule 61(i)(5) exception to the procedural bar.⁴ Finally, Cook alleges that the Superior Court abused its discretion when denying his motion for an evidentiary hearing.⁵

(6) In this case, there is no support in the record for Cook's allegations that his defense counsel's conduct did not meet reasonable professional standards and that, but for his defense counsel's alleged ineffectiveness, Cook would have insisted on proceeding to trial.⁶ Cook's ineffective assistance of counsel claim was thus properly barred pursuant to Rule 61(i)(3) without exception.⁷

³ Del. Super. Ct. Crim. R. 61(i)(3). Under Rule 61(i)(3), any ground for relief that is not adjudicated in the proceedings leading to the judgment of conviction is barred unless the movant demonstrates "cause" for failure to assert the ground and "prejudice" stemming from the alleged grievance.

⁴ Del. Super. Ct. Crim. R. 61(i)(5). Rule 61(i)(5) states in pertinent part that the procedural bar of Rule 61(i)(3) shall not apply "to a colorable claim that there was a miscarriage of justice because of a constitutional violation."

⁵ To the extent Cook has not argued other grounds to support his appeal that were previously raised in his postconviction and related motions, those grounds are deemed waived and will not be addressed by this Court. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

⁶ In the context of a guilty plea, a defendant has the burden of showing that, but for his counsel's deficient performance, he would not have pleaded guilty and would have insisted on proceeding to trial. *Albury v. State*, 551 A.2d 53 (Del. 1988).

⁷ *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

(7) Cook's claim that his guilty plea was involuntary is refuted by his contrary representations in the guilty plea documents that he signed, and the transcript of the guilty plea proceeding. In the absence of clear and convincing evidence to the contrary, Cook is bound by those representations.⁸ Moreover, as determined by the Superior Court, Cook's voluntary guilty plea constitutes a waiver of any alleged defects that arose before the entry of the plea.⁹ The Court also agrees that those claims were appropriately barred pursuant to Rule 61(i)(3) without exception.¹⁰

(8) Finally, Cook has failed to demonstrate any error or abuse on the part of the Superior Court in denying his motion for an evidentiary hearing. Where, as in this case, the record as expanded is adequate to resolve a postconviction claim without an evidentiary hearing, summary disposition is appropriate.¹¹

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁸ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁹ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

¹⁰ *Benge v. State*, 945 A.2d 1099, 1101 (Del. 2008).

¹¹ Del. Super. Ct. Crim. R. 61(d)(4), (h)(3).